

Types of land rights that may be affected in, adjacent uplands, or upriver of the ONRW designation

Three types ownership estates: Land, Water, and Mineral. Alaska allows split ownership where the land and mineral estates can be owned by different entities. In Alaska the mineral estate is the dominant estate, or in other words, the surface estate owner can not prevent the lawful use of the mineral estate, however the land estate owner will be compensated for disturbance. The water is owned by the State of Alaska.

Article 8 Section 16 of the State Constitution says “No person shall be involuntarily divested of his right to the use of waters, his interest in lands, or improvements affecting either, except for a superior beneficial use or public purpose and then only with just compensation and by operation of law.”

So what types of rights are there that may need to be protected or potential impact considered when establishing an ONRW?

1. Public Trust rights – the right of access and use of navigable or public waters of the state unless limited for other beneficial uses or public purposes.
2. Development rights by land or mineral estate owners (State, Federal, Native, Boroughs, Cities, Tribes, Private)
3. Other authorized uses:
 - a. Rights of Way or Easements
 - i. Highway
 - ii. Railroad
 - iii. Aviation
 - iv. Communication
 - v. Utility (power, pipelines, fiber optic)
 - vi. Other transportation
 - b. Leases
 - i. Commercial Recreation (lodges, docks, boat ramps, airstrips)
 - ii. Commercial Development (equipment storage, utility, hydrokinetics, processing plants, other energy development)
 - iii. Community Development
 - c. Permits
 - i. Temporary and Revocable
 - ii. Mineral Exploration
 - iii. Access
 - iv. Habitat Restoration or Improvement
 - v. Municipal sewage treatment
 - vi. Commercial guide use of uplands and waters
 - d. Material Sales

- i. Upland
 - ii. In River (popular in remote AK and often the only source)
- e. Water Rights
 - i. Community use
 - ii. Private use
 - iii. Power Projects (dams, diversions, hydrokinetics)
- f. Oil and Gas
 - i. Leases
 - ii. Plan of Operations (access, drilling, processing, pipelines)
 - iii. Exploration
- g. Mineral Development
 - i. Exploration
 - ii. Placer Authorizations
 - iii. Hard rock development
 - iv. Mill site leases
 - v. Treatment and Reclamation
 - vi. Dams
 - vii. Mixing Zones
- h. Timber Harvest
 - i. Timber Sales and harvest
 - ii. Roads
 - iii. Loading facilities
 - iv. Storage facilities

Considerations:

1. Unknown resource development may be limited because runoff or discharge is limited to no long term water quality degradation in ONRW.
2. Many projects will treat discharge to normal acceptable limits but would not meet the ONRW standard of no long term degradation of water quality.
3. A designation of a lower portion of the river as ONRW would potentially affect development of anything in the entire up river watershed.